IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

Crl.MC.No. 4002 of 2006()

CC.264/1996 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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PETITIONER: COMPLAINANT

GEORGE ZACHARIAH, VATTAMPARAPIL HOUSE,
KUMBANAD P.O., KOIPRAM VILLAGE, REPRESENTED
BY POWER OF ATTORNEY HOLDER THOMAS MAMMEN,
KANDATHIL HOUSE, VALLAMKULAM P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS: ACCUSED AND STATE

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1. SUSHEELA G.NAIR, PUNNON VEEDU,
NARANGANAM P.O., KOZHENCHERRY.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.4002 OF 2006

Dated this the 11th day of December, 2006.

ORDER

The petitioner is the power of attorney holder of the complainant in a prosecution under Section 138 of the N.I Act. The accused has been found guilty, convicted and sentenced. The said decision has become final with the disposal of the revision petition, filed by the accused, by this Court. The accused has deposited the fine amount before the learned Magistrate. Part of the fine amount is to be released to the complainant. During the pendency of the proceedings, the complainant had to go abroad. He therefore had executed a power of attorney in favour of the petitioner authorising him to perform all acts in connection with the prosecution initiated by him against the accused including the right to receive the amounts from the court.

2. The petitioner approached the learned Magistrate and made an application that the amount in deposit may be released to him. He produced the power of attorney document also. But surprisingly, by the impugned order dated 14.11.2006, which I extract below, the learned Magistrate has dismissed the application.

> "14.11.2006:Perused the records. The complainant George Zachariah himself presented C.C.264/06 and Crl.Appeal No.142/97 of Sessions Court, Pathanamthitta. It is stated that the complainant George Zachariah is now in Newziland. The present application is seen filed by a power of Attorney Thomas Mammen. It is to be noted that the present Power of Attorney is not acceptable as the complainant George Zachariah is abroad. It is not just and proper to accept the Power of attorney and hence the same stands dismissed."

3. That the complainant is abroad, cannot be a reason not to accept the power of attorney. In fact, that is a good reason why power of attorney must be accepted and acted upon. No other reasons are shown though it is stated that "it is not just and proper to accept the Power of attorney". I am satisfied that it is not necessary to wait for issue and return of notice to the respondent. The best course to be adopted in the circumstances, I am satisfied, is to set aside the order dated 14.11.2006 and direct the learned Chief Judicial Magistrate to pass fresh orders on the application within a period of 3 days from the date on which a copy of this order is placed before the learned Magistrate.

4. Hand over a copy of this order to the learned counsel for the petitioner today itself.

R.BASANT
JUDGE

rtr/